

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
<b>L&amp;M MACHINE, LTD. d/b/a L&amp;M MACHINE AND CONSTRUCTION and BOB JOENS Mitchell County, Iowa</b>	NO. 2007-AQ- 15 NO. 2007-SW- 09

TO: L&M Machine, Ltd.  
Keith Levorson, Registered Agent  
333 S. Forest Street, Box 238  
Riceville, IA 50466

Mr. Bob Joens  
3314 430<sup>th</sup> Street  
Riceville, IA 50466

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and L&M Machine, Ltd. d/b/a L&M Machine and Construction ("L&M") and Bob Joens for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), open burning and improper disposal of solid waste violations which occurred during L&M's demolition of two residences located in Riceville, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Michelle Johnson  
DNR Field Office 2  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part, Iowa Code section 455B.307(2) which

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authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code ("IAC") chapter 10, which authorize the director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. On April 20, 2007, DNR Field Office 2 received a complaint concerning the demolition of two adjacent residential homes located at 212 & 214 2<sup>nd</sup> Street in Riceville, Iowa. The complainant stated the homes were owned by L&M. The complainant also stated the homes were being hauled and burned at a nearby property owned by Mr. Joens located at 3314 430<sup>th</sup> Street in Riceville.

2. Michelle Johnson and Clay Swanson, DNR Field Office 2 environmental specialists, investigated the complaint. They visited the site of the two houses while the demolition of one of the houses was taking place. The field office personnel spoke with Keith Oulman and Keith Levorson, owners of L&M, and Bob Joens, all of whom were present at the site. During the discussion it was determined that an asbestos inspection had not taken place and the required notification had not been submitted. While talking with the DNR personnel, Mr. Levorson contacted Jeff Bergo, an asbestos abatement contractor. The field office personnel also visited the Joens' property and observed that one of the homes had been disposed of at the property. They also observed evidence of burning of the debris.

3. On April 26, 2007, Ms. Johnson followed up by telephone with Mr. Bergo concerning the status of the site. Mr. Bergo stated he contacted Marion Burnside, asbestos NESHAP coordinator for DNR. Mr. Burnside allowed him to clean the site immediately without waiting for the 10-day waiting period. Mr. Bergo stated that the asbestos notification paperwork had been completed and submitted to DNR. Mr. Bergo reported that both sites were cleaned on April 25, 2007 and that the debris from both sites was properly disposed of at a landfill. Mr. Bergo faxed the landfill receipts to DNR. The cost of cleanup was approximately \$6,500.00. On May 4, 2007, DNR personnel visited both sites and confirmed cleanup was complete.

4. On May 11, 2007, Notice of Violation letters were issued to L&M and Mr. Joens. The letter cited the asbestos NESHAP, open burning, and improper solid waste violations that had occurred. The letter also informed the parties the matter was being referred for further enforcement.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality. Pursuant to Iowa

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Code section 455B.133, 567 IAC. 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(b)"1" requires that written notification of a demolition be submitted to the DNR prior to beginning demolition. The specific requirements for this notification are contained in the subsection. L & M failed to submit a notification for the two houses prior to the original demolition. The above facts indicate a violation of this provision.

3. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. L & M failed to conduct a thorough inspection prior to commencement of the original demolition of the houses. The above facts indicate a violation of this provision.

4. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trades wastes is specifically prohibited. L&M burned the debris from one of the houses and Mr. Joens allowed this burning to occur on his property. The above facts demonstrate violations of this provision.

5. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.

6. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. L&M improperly disposed of the house and Mr. Joens allowed the improper disposal to take place on his property. The above facts demonstrate non-compliance with this provision.

**V. ORDER**

THEREFORE, the DNR orders and L & M and Bob Joens agree to do the following:

1. L & M and Mr. Joens shall pay a penalty of \$2,000.00 within 60 days of the date from which the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up

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to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,000.00. The administrative penalty is assessed to L & M and Mr. Joens, jointly and severally. The administrative penalty is determined as follows:

Economic Benefit – L&M and Mr. Joens saved time and money by improperly burning and disposing of one of the houses at Mr. Joens' property rather than taking the debris to a landfill. The action reduced fuel costs and eliminated landfill tipping fees. However, any money that was saved initially in disposing of the house at Mr. Joens' property was later spent in the cleanup of the debris as required by the DNR. L&M did save money by not conducting an asbestos inspection prior to demolishing the two houses. The cost of inspection is estimated to be at least \$250.00. Based on the above considerations, \$250.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to properly remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. The demolition caused air pollution from any asbestos-containing material present in the residences. One of the residences was subsequently transported outside of town and deposited on Mr. Joens' property. The open burning of the waste released more toxins in the air and increased potential groundwater contamination because the waste was dumped in an excavated pit instead of a landfill, which has a liner to prevent groundwater contamination. Based on the above considerations, \$1,000.00, is assessed for this factor.

Culpability – L & M and Mr. Joens have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. L & M and Mr. Joens immediately ceased operations upon the DNR's intervention and followed instructions accordingly. An asbestos abatement contractor was contacted and

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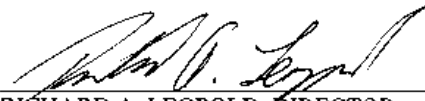
plans were made to remedy the situation. Notification procedures were then followed and the waste was properly disposed of at a landfill in a timely manner. Based on the above considerations, \$750.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of L & M and Mr. Joens. For that reason L & M and Mr. Joens waive their rights to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

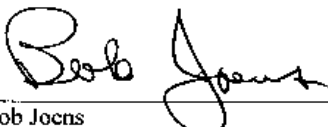
Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 24 day of  
July, 2007.

  
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For L & M Machine, Ltd.

Dated this 2 day of  
July, 2007.

  
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Bob Joens

Dated this 2 day of  
July, 2007.

Barb Stock (Con 10-6 Mitchell County); Kelli Book; Field Office 2; Dan Stipe; VI.D., VII.C.1, and VII.C.4